

except an SBA business loan program (see § 120.913 for SBIC exception).

§ 120.911 Land contributions.

The Borrower's contribution may be land (including buildings, structures and other site improvements which will be part of the Project Property) previously acquired by the Borrower or the CDC.

§ 120.912 Borrowed contributions.

The Borrower may borrow its cash contribution from the CDC or a third party. If any of the contribution is borrowed, the interest rate must be reasonable. If the loan is secured by any of the Project assets, the loan must be subordinate to the liens securing the 504 Loan, and the loan may not be repaid at a faster rate than the 504 Loan unless SBA gives prior written approval. A third party lender may not receive voting rights, stock options, or any other actual or potential voting interest in the small business.

§ 120.913 May an SBIC provide the contribution?

Subject to part 107 of this chapter, SBIC's may provide financing for all or part of the Borrower's contribution to the project. SBA shall consider SBIC funds to be derived from federal sources if the SBIC has leverage (as defined in part 107 of this chapter). If the SBIC does not have leverage, the investment will be considered to be from private funds. SBIC financing must be subordinated to the 504 loan and may not be repaid at a faster rate than the Debenture.

THIRD PARTY LOANS

§ 120.920 The first lien position.

The Borrower must obtain one or more Third Party Loans totaling at least as much as the 504 loan. Third Party Loans usually have the first lien position. They cannot be guaranteed by SBA.

§ 120.921 Terms of Third Party loans.

(a) *Maturity.* A Third Party Loan must have a term of at least 7 years when the 504 loan is for a term of 10 years and 10 years when the 504 loan is

for 20 years. If there is more than one Third Party Loan, an overall loan maturity must be calculated, taking into account the maturities and amounts of each loan. If there is a balloon payment, it must be justified in the loan report and clearly identified in the Loan Authorization.

(b) *Interest rates.* Interest rates must be reasonable. SBA must establish and publish in the FEDERAL REGISTER a maximum interest rate for any Third Party Loan from commercial financial institutions. The rate shall remain in effect until changed.

(c) *Other terms.* The Third Party Loan must not have any early call feature or contain any demand provisions unless the loan is in default. By participating, a Third Party Loan lender waives, as to the CDC/SBA financing, any provision in its deed of trust, or mortgage, or other documents prohibiting further encumbrances or subordinate debt. In the event of default, the Third Party Lender must give the CDC and SBA written notice of default within 30 days of the event of default and at least 60 days prior to foreclosure.

(d) *Subordination.* A Third-Party Loan lienholder must subordinate to the CDC/SBA lien any future advance in excess of the outstanding principal balance and accrued interest of the Third Party Loan at the time of such advance except expenditures for collection, maintenance, and protection of the Third Party Loan lienholder's lien position.

(e) *Escalation upon default.* A Third-Party Lender may not escalate the rate of interest upon default to an amount greater than the maximum rate set forth in paragraph (b) of this section.

§ 120.922 Pre-existing debt on the Project Property.

In addition to its share of Project cost, a Third-Party Loan may include consolidation of existing debt on the Project Property. The consolidation must not improve the lien position of the Lender on the pre-existing debt, unless the debt is a previous Third-Party Loan.